

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

MISSOURI PRIMATE FOUNDATION, )  
et al., )  
                                  )  
Plaintiffs and )  
Counterclaim Defendants, )  
                                  )  
v. )                              Case No. 4:16-cv-02163  
                                  )  
PEOPLE FOR THE ETHICAL )  
TREATMENT OF ANIMALS, INC., et al., )  
                                  )  
Defendants and )  
Counterclaim Plaintiffs. )

**COUNTERCLAIM PLAINTIFFS' MOTION FOR LEAVE TO FILE  
SUPPLEMENTAL MEMORANDUM IN FURTHER SUPPORT OF  
COUNTERCLAIM PLAINTIFFS' MOTION FOR SANCTIONS  
FOR SPOILATION OF EVIDENCE**

Counterclaim Plaintiffs People for the Ethical Treatment of Animals, Inc. and Angela Scott a/k/a Angela G. Cagnasso (together, "Plaintiffs") respectfully move this Court to grant them leave to file the [Proposed] Supplemental Memorandum in Further Support of Counterclaim Plaintiffs' Motion for Sanctions for Spoliation of Evidence ("Supplemental Memorandum") submitted herewith. In support of this motion, Plaintiffs state the following:

1. Plaintiffs' case against Counterclaim Defendant Andrew Sawyer ("Sawyer") centers around the issue of whether a chimpanzee named Joey, who is owned by Sawyer, presently is, and in the past has been, confined under conditions that violate the Endangered Species Act.
2. Because Sawyer removed Joey to a secret location to evade judicial scrutiny, Plaintiffs moved on June 4, 2018, for sanctions for Sawyer's spoliation of this evidence (the "Spoliation Motion"). [ECF Nos. 66, 67].

3. The Supplemental Memorandum is limited to a discussion of evidence and information that was unavailable at the time Plaintiffs briefed the Spoliation Motion.

4. Local Rule 4.01 permits the filing of a motion, a response to a motion, and a reply in support of a motion and specifies that “[a]dditional memoranda may be filed by either party only with leave of Court.” E.D. Mo. L.R. 4.01(C). “A party that wishes to file additional briefing after a reply must file a motion for leave of Court to do so, must explain in the motion for leave why additional briefing is necessary, and must submit the proposed additional briefing along with the motion for leave.” *Davis v. Jomp*, No. 4:16-CV-229 CAS, 2017 WL 1407293, at \*1 (E.D. Mo. Apr. 20, 2017).

5. Supplemental briefing for the Spoliation Motion is necessary because Plaintiffs need to inform the Court that Sawyer refused to confirm at his deposition that his pleadings and other filings purportedly made in Sawyer’s name were authorized by Sawyer, or that they truthfully represent Sawyer’s personal views. *See* Supplemental Memorandum at II.A.

6. In addition, at his deposition, Sawyer invoked the Fifth Amendment privilege in response to each question eliciting substantive information about the conditions and whereabouts of Joey, and he refused to identify any witnesses, documents, or other evidence relating to the merits of this case. *See* Supplemental Memorandum at II.B. This contradicts the assertion by Sawyer’s counsel that Joey’s removal “does not in any manner effectively prohibit the animal from being evaluated and examined.” [ECF No. 70, at 2].

7. Accordingly, good cause exists to grant Plaintiffs’ request for leave to present this after-acquired information regarding Sawyer’s deposition testimony, because that information is both highly relevant and it will assist the Court in determining the merits of the pending Spoliation Motion. *See, e.g., United States v. Reed*, No. 4:12 CR 59 CDP, 2012 WL 4343406, at

\*1 (E.D. Mo. Sept. 24, 2012), *aff'd*, 545 F. App'x 579 (8th Cir. 2013) (granting leave to file a supplemental memorandum after a hearing “following receipt of the transcript”); *Kinder v. Geithner*, No. 1:10 CV 101 RWS, 2011 WL 1576721, at \*2 (E.D. Mo. Apr. 26, 2011), *aff'd*, 695 F.3d 772 (8th Cir. 2012) (granting motion to file a supplemental memorandum where, subsequent to initial briefing, an additional development “squarely impact[ed]” the issues raised by the pending motion and provided “an additional basis” to rule on the pending motion); *Johnson v. Midcoast Aviation*, No. 4:06-CV-1805(CEJ), 2008 WL 3200801, at \*4 (E.D. Mo. Aug. 6, 2008) (providing “leave of Court to subsequently file a supplemental memorandum . . . based on the after-acquired evidence doctrine”).

**WHEREFORE**, Plaintiffs respectfully request that the Court enter an Order, in the form submitted herewith, **GRANTING** Plaintiffs leave to file the [Proposed] Supplemental Memorandum in Further Support of Counterclaim Plaintiffs’ Motion for Sanctions for Spoliation of Evidence, and **MOREOVER ORDERING** that the [Proposed] Supplemental Memorandum submitted herewith is deemed properly filed as of the date of the Order.

Dated: August 20, 2018

Respectfully submitted,

/s/ Martina Bernstein  
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*Attorneys for Defendants/  
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## **CERTIFICATE OF SERVICE**

I certify that on August 20, 2018, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, by which notification of such filing was electronically sent and served to the following:

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And was served by regular mail on the following:

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/s/ Jared S. Goodman